

The 10 cent intraLATA toll prices in Connecticut are not unusual. As Table 2 demonstrates, rates of this magnitude — or even lower — are offered in a number of other states. AT&T offers intraLATA rates of 10 cents per minute or less in thirteen states. Prices in six states are lower than 10 cents. AT&T offers an intraLATA toll price of 5 cents per minute in Illinois, 6 cents in the New York City metropolitan area (LATA 132), an 8 cent rate in California, Delaware, New Jersey and upstate New York, and 9 cents in Pennsylvania. These are all standard offerings, not time-limited promotions. In none of these states has the BOC been allowed to enter the interLATA toll market or offer bundled local/interLATA toll services.

InterLATA toll

No discernable differences exist as between the interLATA toll prices being offered to consumers in Connecticut vis-a-vis those available to consumers nationwide. SNET's prices for interLATA toll service are fully comparable to the various pricing plans being offered by the IXC's, and provide no particular or unique source of "enrichment" to Connecticut consumers. Table 3 below compares the average cost per month for subscribers with varying usage characteristics under two SNET interLATA pricing plans, two AT&T interLATA pricing plans, and one pricing plan each for MCI and Sprint. Note that with the exception of a few random hourly use patterns, the prices offered by SNET are no lower than (and in most instances not as good as) the prices being offered by the IXC interLATA toll plans.²³

Table 2	
Comparison of AT&T "Fixed" IntraLATA Pricing Plans in Representative States	
State	Fixed Rate
Connecticut	.10
California	.08
Delaware	.08
Florida	.10
Georgia	.10
Hawaii	.10
Illinois	.05
Massachusetts	.10
Maryland	.10
Michigan	.12
Minnesota	.14
New Jersey	.08
NY downstate	.06
NY upstate	.08
Pennsylvania	.09
Washington	.14
7 days a week, 24 hours a day.	

23. Variations in ranking based upon individual usage patterns are neither surprising nor particularly important. They result from efforts of each provider to target specific market segments, and do not represent systemic differences among carriers in overall rate level. For example, MCI's unbranded "10-321" promotion offers a 50% discount for all calls over 20 minutes, but rates for shorter-duration calls are often higher than those charged by IXC's under conventional 1+ presubscription plans.

Table 3

Analysis of InterLATA Toll Prices Available to Residential Customers
In Connecticut With Different Usage Levels

<u>Hours of Use Per Month</u>	<u>Average Call Duration</u>	<u>Time of Day Distribution</u>	<u>SNET PLANS</u>		<u>AT&T Plans</u>		<u>Sprint</u>	<u>MCI</u>
			<u>Simple Solutions</u>	<u>Automatic Savings</u>	<u>OneRate</u>	<u>OneRate Plus</u>	<u>Sprint Sense</u>	<u>One Savings</u>
1	9.2 mins	25/50/25	n/a	\$0.150	\$0.158	\$0.188	\$0.082	n/a
1	4.5 mins	80/10/10	n/a	\$0.150	\$0.167	\$0.194	\$0.196	n/a
1	15.8 mins	10/50/40	n/a	\$0.150	\$0.155	\$0.186	\$0.109	n/a
2	9.2 mins	25/50/25	n/a	\$0.150	\$0.158	\$0.147	\$0.135	n/a
2	9.2 mins	80/10/10	\$0.213	\$0.150	\$0.158	\$0.147	\$0.215	n/a
2	9.2 mins	10/50/40	n/a	\$0.150	\$0.158	\$0.147	\$0.113	n/a
5	9.2 mins	25/50/25	\$0.170	\$0.120	\$0.158	\$0.122	\$0.135	\$0.108
5	4.5 mins	25/50/25	\$0.170	\$0.120	\$0.167	\$0.128	\$0.122	\$0.114
5	15.8 mins	25/50/25	\$0.170	\$0.120	\$0.155	\$0.120	\$0.131	\$0.106
20	15.8 mins	10/50/40	\$0.151	\$0.102	\$0.155	\$0.107	\$0.109	\$0.095
20	4.5 mins	80/10/10	\$0.211	\$0.102	\$0.167	\$0.115	\$0.196	\$0.126
20	9.2 mins	25/50/25	\$0.211	\$0.102	\$0.158	\$0.110	\$0.215	\$0.119

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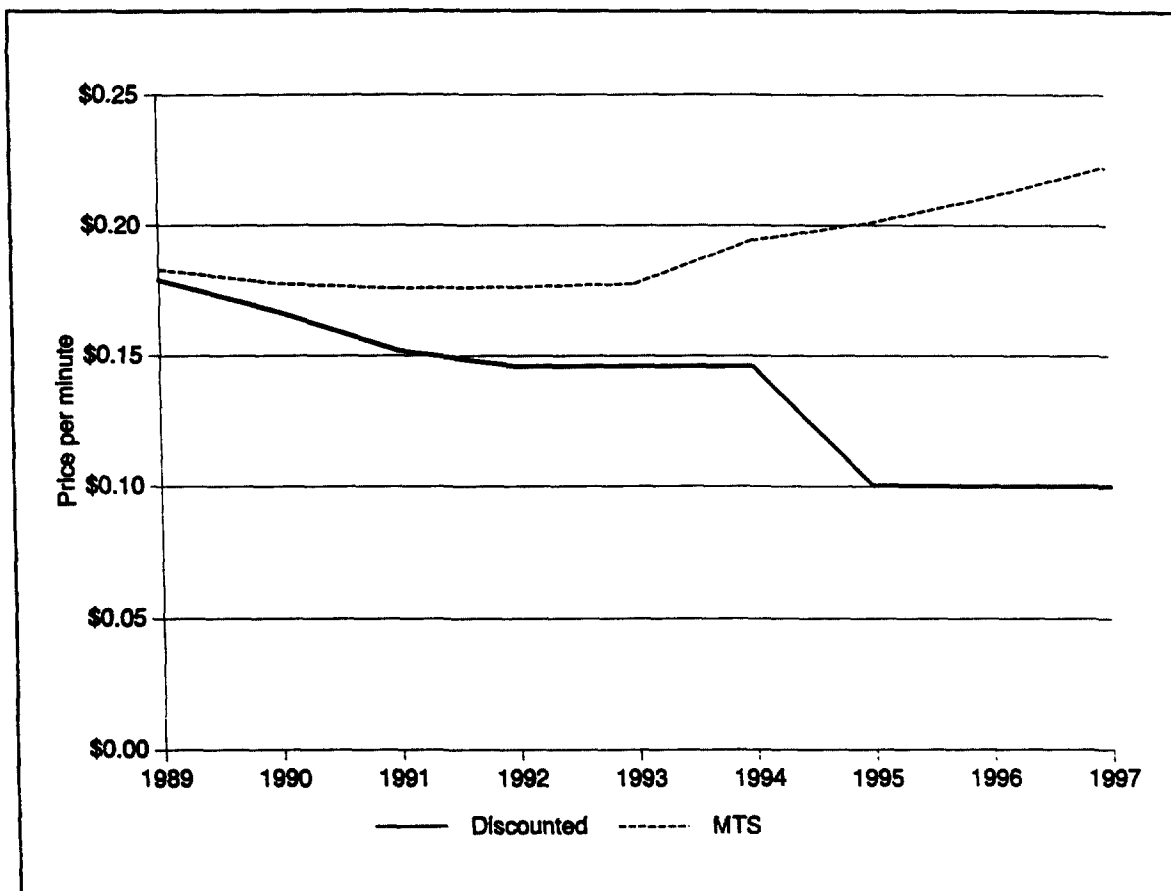


Figure 2. Residential Interstate Index Prices for AT&T MTS Service and best available discount calling plan, 1989-1997. (40/30/30 Day/Evening/Night usage distribution)

It should come as no surprise that SNET's entry into the interLATA long distance market has not had a consequential impact upon the level of interLATA prices. Despite attempts to portray it as otherwise, the interLATA toll market is quite competitive. The entry of one additional competitor should not be expected to have a vast impact upon the competitive landscape *unless* that competitor is able to cross subsidize its competitive toll services with excessive monopoly local service prices.²⁴ Indeed, prices in the interLATA

24. SNET has petitioned the FCC to apply a lower productivity factor to SNET than it does to the BOCs and other "elective" price cap LECs, under the Commission's price cap rules. *Petition of The Southern New England Telephone Company for Waiver and/or Amendment of Part 61 of the Commission's Rules Establishing an "X-Factor" of 6.5%*, filed August 13, 1997. In making this request, SNET claimed that its earnings on interstate services are (and have historically been) much lower than those of the BOCs. SNET cites "an unprecedented amount of competition in the provision of exchange access service" in Connecticut as one of the reasons for its
(continued...)

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market, both for business and residential users, have been falling steadily for the past decade. To the extent that further declines continue presently, they result from the overall competitiveness and declining cost characteristics of the industry, not of SNET's entry onto the scene. Figure 2 presents the results of an analysis of the average price per minute under the various AT&T residential customer discount plans utilizing the "best rate plan" available to a given consumer in each of the years from 1989 to January, 1997. The analysis was based upon a customer making three hours per month of long distance calling.²⁵ As the figure confirms, the discounted price per minute has declined steadily throughout the 1990s, with the average discounted price per minute becoming an increasingly smaller fraction of the non-discounted MTS rate. Based upon our analysis of the "best" discount and promotional pricing plans being offered at each point in time, and using estimated time-of-day and mileage distributions, the average discounted price per minute as a percentage of the full MTS price has steadily dropped from 97.8% in 1989 to 44.9% as of the beginning of 1997.²⁶

It is also instructive to compare interLATA (interstate) rates offered to Connecticut consumers with interLATA *intrastate* rates that are available in larger states, because BOCs are also excluded from these in-state interLATA markets as well. California, with 12% of the US population, covers an area and distances that are comparable to those of more than a dozen East Coast states combined. An intrastate interLATA call between San Diego and San Francisco is roughly comparable to an *interstate* interLATA call between Hartford and Washington; similarly, a call from San Jose to San Francisco is comparable to a call from Stamford to New York City. Yet AT&T's, MCI's and Sprint's prices for these intrastate calls within California — where Pacific Bell cannot offer interLATA services — are considerably *lower* than those being offered for comparable calls by SNET to its Connecticut customers (e.g., approximately 5 cents per minute within California and 15 cents per

24. (...continued)

purported lackluster financial performance, although it offers no specific quantification of the economic effects of such "competition." Assuming, *arguendo*, that SNET's portrayal of the state of competition (relative to BOC jurisdictions) is accurate, which as we discuss here it probably is not, the practical implication of the Company's request would be to cause the customers of its *noncompetitive* interstate services (i.e., access services) to pay higher rates (relative to customers of ILECs using the prescribed 6.5 percent X-factor) and, as such, subsidize SNET for its alleged competitive losses. Alternatively, the apparent earnings shortfall claimed by SNET could also be explained by the Company's launch of a 15-year, \$4.5-billion infrastructure upgrade aimed at the provision of video services and other nonregulated and competitive services. "SNET to Spend \$4.5-Billion on Connecticut's Info Superhighway," *Telecommunications Reports*, January 17, 1994, at 30.

25. Extrapolating from "Link Survey Data" reported in an Affidavit executed by Professor Paul W. MacAvoy in connection with a Section 271 application filed by Ameritech in Michigan in December, 1996, customers whose usage was consistent with this level (spending in the range \$25 to \$35 per month), combined with those customers who have higher usage levels, account for something in excess of 80% of AT&T's volume of calls from residential customers. See MacAvoy Affidavit, Appendix A, Table Three, at A-28.

26. Source: AT&T Tariffs.

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minute for interstate calls of comparable distances in the Northeast). In fact, a California consumer with interLATA usage comparable to his or her Connecticut counterpart would pay *less* for long distance service overall, *despite the absence of "competition" that Huber contends Pacific Bell's entry would bring.*

Huber's entire "analysis" of Connecticut vs. nationwide long distance prices rests upon his inappropriate melding of intraLATA and interLATA prices. Examining these distinct markets separately, as they should be, reveals that Huber's "findings" and his conclusions about the "enrichments" that SNET toll entry has brought to Connecticut consumers are one thing only: Dead wrong.

Local exchange service prices

Not only have local exchange access rates in Connecticut not decreased appreciably since SNET began offering interLATA long distance services, they are actually on the high side when compared with other states, particularly when one adjusts for the relatively small local calling areas offered by SNET. Table 4 compares the prices for residential flat-rate local exchange service in Connecticut and in several other states in which the toll-free local calling areas were typically larger than those in Connecticut. While comparisons of calling area scope are difficult, it should be noted that regulators in all of the other states we have selected for comparison have undertaken specific actions to expand local calling areas - a step that has not occurred in Connecticut.

Table 4	
Comparison of SNET Residential Local Service Rates in Connecticut To Local Service Rates in States that have Larger Local Calling Areas	
State	Monthly Rate for Flat Rate Local Service (including \$3.50 SLC)
Connecticut	\$18.03
Massachusetts	\$20.35
Colorado	\$18.43
Arizona	\$16.68
California	\$14.75
Florida	\$14.15
Delaware	\$12.90

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Of particular interest are the flat rate local service prices in California and Delaware - two states with intraLATA toll prices that are lower than those available in Connecticut. While the geographic and demographic characteristics of both states are dramatically different, local service prices are uniformly lower than those offered to Connecticut consumers. A flat rate residential local service line in the most densely populated Connecticut exchange is priced at \$14.53 per month plus the \$3.50 interstate Subscriber Line Charge (SLC), or \$18.03.²⁷ This rate is more than 20% higher than the price for a comparable line in the most densely populated exchange in California (\$11.25 plus the \$3.50 SLC).²⁸ The Connecticut price is more than \$5.00 higher (40%) than the Wilmington, Delaware flat rate of \$9.40 (plus the SLC).²⁹

Both California and Delaware offer substantially larger geographic toll-free calling areas than does SNET. California residential customers receive flat-rate local calling to all (adjacent and non-adjacent) exchanges within a radius of 12 rate miles from the basing point of their home exchange;³⁰ Delaware offers county-wide local calling³¹ which, in some areas, encompasses exchanges more than 30 miles apart.³² By contrast, Connecticut customers generally can place local calls only within their home and adjacent exchanges which, in most cases, limit distances to 8 to 10 miles. Because of these relatively small local calling areas, Connecticut consumers will tend to incur more toll charges than will similarly situated customers in states with more liberal local calling policies.

Faced with the *fact* that local rates have failed to decrease despite what he portrays as "intense" competition, Huber attempts to explain (or perhaps excuse) this result by contending that SNET and other ILECs lose money on local services because they are forced to set prices below cost.³³ His data sources for this conclusion are a curious combination of the various accounting reports provided by incumbent LECs to the FCC (and compilations thereof that are regularly published by the agency) and cost proxy results

27. The Southern New England Telephone Company, Local Service Tariff, Part X, Sec. 2, Sheet II.

28. Pacific Bell tariff, Schedule Cal. P.U.C. No. A5, Sec. 5.2.4.

29. Bell Atlantic Delaware, Inc. tariff, P.S.C.-Del.-No. 3A, Sec. B.2.b.

30. Pacific Bell Tariff, Schedule Cal. P.U.C. No. A5, Section 5.2.2.B and 5.2.2.C; 4th Rev. Sheet 213 and Original Sheet 214.1.

31. Bell Atlantic Delaware, Inc. tariff, P.S.C.-Del.-No. 3A, sec. B.2.b.

32. Bell Atlantic Delaware, Inc. tariff, P.S.C.-Del.-No. 3A, sec. C.2. For example, the Selbyville local calling area includes the Bridgeville (29 miles away), Greenwood (32 miles away), and Milford (34 miles away) exchanges.

33. Huber report, at ii.

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estimated by the Hatfield Model.³⁴ These comparisons of *current* local revenues with a hybrid of *historic embedded costs* (that ILECs record on their books of account) and forward-looking proxy costs teaches nothing about the profitability of local service today and into the future. Huber does not, for example, compare prevailing SNET prices (including revenues from profitable toll, access and vertical services) with those costs that would prevail in a competitive market, i.e., *forward-looking* incremental costs that SNET would confront by utilizing efficient, least-cost forward-looking technology.³⁵

For example, in its *Interconnection Order* in CC Docket 96-98, the FCC identified the forward-looking cost of a local exchange access line in Connecticut as \$13.23 per month. Huber puts the average revenue per residential access line (consisting of the basic monthly charge, the SLC, intra- and interstate access, and vertical services and features) at \$31.50,³⁶ or \$18.27 *greater* than the forward-looking cost of this service as identified by the FCC. If there were actual competition in the Connecticut local service market, prices would be bid down to the incremental cost level; that this has failed to occur graphically confirms the lack of competition, notwithstanding Huber's backward-looking attempt to portray the local service market as unprofitable.

Unchecked and unchallenged by rivals whose entry remains largely blocked by SNET's intransigence in accepting its obligations under Sections 251 and 252 of the *Telecommunications Act*, SNET can continue to exact high local revenues from its captive customers.

When considered together, combined local and toll price levels offered to Connecticut consumers are actually higher than those offered to consumers in other states where ILEC interLATA entry has not occurred.

As we have noted, Huber's contentions regarding the various economic benefits ("enrichment") that he attributes to SNET's long distance entry and to other state regulatory actions are based entirely upon price decreases for *intraLATA* toll. In order to see how or if Connecticut consumers have benefitted from the overall regulatory climate as it affects SNET's activities, it is instructive to compare the overall prices offered to Connecticut consumers for a basket of local, intraLATA toll and interLATA toll services to prices for similar baskets that are available to consumers in another jurisdiction in which the ILEC is

34. *Id.*, at 13.

35. Interestingly, Huber concedes that when toll and optional services revenues are included, local residential rates in Connecticut are compensatory even with respect to *embedded costs*. *Id.*, at 14-17.

36. *Id.*, at 14-17.

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prohibited from "bundling" its local and long distance services. We have selected Delaware for purposes of this analysis, because Delaware is a state that, like Connecticut, is comprised of a single LATA, with service provided almost entirely by a single ILEC (Bell Atlantic). The primary difference, from a "phone service" perspective, is that SNET can provide "bundled" interLATA toll, intraLATA toll and local services, whereas Bell Atlantic - Delaware is currently precluded from bundling interLATA service with local and intraLATA toll.³⁷ As Table 5 shows, we analyzed the potential monthly billing levels for several possible customer usage mixes at price levels available in Connecticut and in Delaware. In all cases, the total basket price available to a customer buying service in Delaware (where bundling is not allowed) is *lower* than the best possible rate in Connecticut.

In fact, Table 5 likely *overstates* the basket price for a Delaware customer, because it does not directly account for the larger local calling areas that are offered there relative to the small toll-free zones provided by SNET. Intrastate toll revenues account for only 10.5% of Bell Atlantic-Delaware's total intrastate revenues; in Connecticut, SNET derives some 14.4% of its total intrastate revenues from in-state toll.³⁸

SNET's strategic resistance to local competition has neither been diminished nor constrained by its ability to enter the long distance market.

The development of local competition in Connecticut has neither been expedited nor enhanced, relative to jurisdictions served by Bell Operating Companies, by virtue of SNET's distinctive position as a provider of both local and long distance services. Rather, lacking any direct incentive to make progress toward satisfying the Act's most fundamental requirements for opening local markets, SNET has adopted a pattern of behavior that has raised the hurdles to achieving effective and sustainable local competition in Connecticut. Through various delaying tactics and repeated legal challenges to fundamental provisions of the 1996 *Telecommunications Act*, SNET has succeeded in protecting its position of market dominance even as it exploits its unrestricted long distance entry opportunity.

37. Except for special exemptions, as we stated above, RBOCs cannot offer interLATA service and therefore, by definition, cannot bundle. Because the entire state of Delaware is included within the Philadelphia LATA, Bell Atlantic is permitted to carry toll traffic between Delaware and the Pennsylvania portion of the LATA. The Company is not, however, permitted to bundle or package its local intrastate services in Delaware with intraLATA interstate calling to points in Pennsylvania.

38. FCC, *Statistics of Communications Common Carriers*, 1996, Table 2.9, sum of lines 159 and 162 as a percentage of line 190; col. 9 (Delaware), col. 20 (Connecticut).

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Table 5

**Comparison of Aggregate Price for Purchase of Sample Telecommunications "Bundles"
SNET - Connecticut and Bell Atlantic - Delaware**

	<u>SNET Connecticut</u>	<u>Bell Atlantic Delaware</u>	<u>Additional cost to Connecticut customer</u>
<u>Bundle 1</u>			
Flat Rate Local Service	\$18.03	\$12.90	
1 Hour IntraLATA usage	\$7.95	\$4.80	
1 Hour InterLATA usage	\$9.00	\$9.00	
Total	\$34.98	\$26.70	\$8.28
<u>Bundle 2</u>			
Flat Rate Local Service	\$18.03	\$12.90	
2 Hours IntraLATA usage	\$15.90	\$9.60	
2 Hours InterLATA usage	\$18.00	\$16.95	
Total	\$51.93	\$39.45	\$12.48
<u>Bundle3</u>			
Flat Rate Local Service	\$18.03	\$12.90	
5 Hours IntraLATA usage	\$39.00	\$24.00	
5 Hours InterLATA usage	\$36.00	\$34.95	
Total	\$93.03	\$71.85	\$21.18
<u>Bundle 4</u>			
Flat Rate Local Service	\$18.03	\$12.90	
5 Hours IntraLATA usage	\$39.00	\$24.00	
10 Hours InterLATA usage	\$61.20	\$64.95	
Total	\$118.23	\$101.85	\$16.38
<u>Bundle 5</u>			
Flat Rate Local Service	\$18.03	\$12.90	
5 Hours IntraLATA usage	\$39.00	\$24.00	
20 Hours InterLATA usage	\$122.40	\$124.95	
Total	\$179.43	\$161.85	\$17.58

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Enactment of Public Act 94-83³⁹ placed Connecticut at the forefront of states prepared to proceed to implement local exchange competition. Since its passage, Connecticut's Department of Public Utility Control (DPUC) has conducted more than two dozen proceedings related to local competition. However, while the DPUC has often expressed positive sentiments about the need to lay a strong foundation for competition, it has not always been able to stay ahead of the artful maneuvering by which SNET has retained many of its historic incumbency advantages and occasionally to invent new ones. As a result (and as demonstrated below), local competition in Connecticut faces no fewer obstacles overall than in other jurisdictions and, in fact, must overcome some roadblocks that are unique to SNET's home state.

Economic and demographic advantages, rather than SNET's aggressive entry into long distance and cable, make the Connecticut market a relatively attractive target for local competition.

In singling out Connecticut as a model of the potential benefits of increased telecommunications competition if only the Bell Companies were permitted to enter the long distance market, Huber takes pains to attribute what he considers the development of intense competitive activity in Connecticut solely to SNET's license to compete in the interLATA long distance business:

As noted, local competition is developing faster in Connecticut than in almost any other state, and residential subscribers in Connecticut already benefit from it. ... The important lesson is that the competitive gains in both residential and long-distance markets resulted from a single regulatory policy: Let competitors compete. [p.50]

In Huber's view, there is no reason that competitors should be particularly interested in this rather small and insignificant state or that the Connecticut market should have attracted CLEC entry sooner than elsewhere. He concludes that competitors' interest in Connecticut must therefore be an almost entirely defensive competitive response, attributable solely to SNET's decision to forge ahead with interLATA long distance services and "bundling" of local and long distance services. As it turns out, both parts of Huber's thesis — that Connecticut leads the nation in telecommunications competition and that this condition is a direct consequence of SNET's long distance entry — crumble when exposed to scrutiny.

Backing up his notion that there is no explanation other than SNET's long distance entry for the level of competitive activity in Connecticut, Huber cites several demographic

39. Public Act 94-83 became law on July 1, 1994, over 19 months before passage of the federal *Telecommunications Act of 1996*.

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and economic factors that he suggests ought to place Connecticut far down on anyone's list for market entry.⁴⁰ This denigration of Connecticut's fundamental economic attractiveness comes as a surprise to those more familiar with the state than Huber. SNET, for example, describes its home state as a highly attractive market: In its 1995 Video Dialtone application to the FCC, SNET painted a highly favorable demographic and economic portrait of Connecticut,⁴¹ and those conditions have certainly not changed in any significant respect since that time.

The conclusion that Connecticut is an economic backwater would also be news to many residents of the country's highest-ranked state in terms of personal income per capita (a distinction Connecticut has held since 1986).⁴² The state's concentration of high-income consumers translates into higher levels of disposable income available for the purchase of telecommunications and information services. Connecticut is also among the most densely settled states, with 675 persons per square mile as compared with only 74.3 nationwide,⁴³ a factor that should favorably influence the cost of deploying telecommunications networks and thereby increase the state's appeal as a target for new service providers. While Huber characterizes much of the southern part of the state as "a residential suburb of New York City,"⁴⁴ in fact, Connecticut has roughly the same proportion of business and residential access lines as the rest of the nation.⁴⁵ Moreover, the Connecticut Department of Economic and Community Development reports robust growth in both new residential construction and commercial activity throughout the state. Through September 1997, the number of new housing permits issued is up 23.7 percent over the same period in 1996 while retail sales are up 7.0 percent.⁴⁶ Business starts and terminations during the same period reveal a net gain of over 10,000 new establishments.⁴⁷ Connecticut also continues

40. Huber points out that Connecticut's primary business center, Hartford, ranks only 143rd in population and that much of southern Connecticut is a residential suburb of New York City. He concludes that "Connecticut would not appear to be the nation-leading target for competition." Huber report, at 43.

41. FCC File No. W-P-C 6858, *Application of The Southern New England Telephone Company for Authority to Construct, Own, Operate and Maintain Commercial Video Dialtone Service*, filed April 28, 1995, Exhibit G.

42. State of Connecticut, *1997-99 Economic Report of the Governor*, Part 4, at 103.

43. *Id.*, at 3.

44. Huber report, at 44.

45. FCC, *Statistics of Communications Common Carriers*, 1996, Table 2.5, Access Lines by Type of Customer for Reporting Local Exchange Carriers as of December 31, 1996. Business access lines in Connecticut represent 31.6% of all access lines, virtually identical to the national figure of 32.1%.

46. "September Housing Permits Increase," *The Connecticut Economic Digest*, Vol. 2, No. 11, p. 3.

47. *Id.*, at 7.

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to out-pace the nation in the addition of jobs in communication-related fields such as the computer service industry. Between 1990 and 1996, Connecticut's total employment in this important high-wage industry grew by 82 percent while computer services employment nationwide grew by only 58 percent.⁴⁸ Finally, Connecticut ranks seventh nationwide in the number of interstate calling minutes per capita, adding even more to its allure as a target for interstate service competitors.⁴⁹ In short, to the extent that competitors seek to enter the Connecticut telecommunications market, they do so because it offers obvious economic and business opportunities, not because SNET is breathing down their backs.

Huber offers no hard facts to demonstrate that a more vigorous level of local competition has materialized in Connecticut than in other states where the dominant incumbent LEC remains excluded from the long distance market. He provides no data about competitors' market shares, no data on the quantities of unbundled loops or wholesale services provided by SNET to CLECs, no data about geographic coverage of competitors' offerings, no data about competitors' investments in local telecommunications plant and equipment in the state, and no data to suggest that the "intense" competition he describes has resulted in lower prices to consumers for these "competitive" local services. Instead, he merely repeats old, tired claims that competitors are "present" in the state, citing regulatory certifications,⁵⁰ interconnection agreements signed, and newspaper accounts of competitors' service announcements.

In fact — and in stark contrast to Huber's unsupported claims — competitors have not entered Connecticut's local telephone market to any greater extent than elsewhere. A similar mix of national and regional companies, IXCs, CAPs, and cable providers have obtained certification to provide local service and have taken comparable steps toward entering local markets in many other states.⁵¹ The lack of local competition in

48. *Id.*, at 3.

49. FCC, *Statistics of Communications Common Carriers*, 1996, Table 2.6. Population Estimates Program, Population Division, U.S. Bureau of the Census, Washington, DC, December 30, 1996.

50. Because of the limited expense for and difficulty in getting certification, many carriers will get legal operating authority but never launch a serious offering to the public.

51. For example, as of July 29, 1997, Ameritech Indiana identified 43 new providers who had sought authority to offer local exchange service on a facilities-basis, through resale, or both, and indicated that the Indiana Commission had granted 9 certificates for facilities-based providers and 25 resellers, with numerous applications of each type still pending. See Testimony of Paul Van Lieshout on Behalf of Ameritech Indiana, Indiana Utility Regulatory Commission, Cause No. 40849, Exh. PFV-1. The same witness identified that, as of July 29, 1997, the ILEC had a dozen approved interconnection agreements, with about ten more pending. *Id.*, Exh. PFV-2. Similarly, the evidence filed by Ameritech Michigan in May 1997 in support of its Second Application for Section 271 authority identifies 18 "competitive entrants" to the Michigan local exchange market (with the source of this information coming primarily on certification and secondarily from press accounts, news releases, CLEC marketing (continued...)

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Connecticut should come as no surprise in light of the miserable entry conditions described below. These circumstances can hardly be seen as a benefit to consumers arising from SNET's early entry into the long distance business.

51. (...continued)
brochures and similar sources). Ameritech Michigan Second Application, v. 3.3 (Testimony of Robert G. Harris and David J. Teece), Table III.5.

3 | BYPASSING SECTION 271 AND OTHER LEGISLATIVE/ REGULATORY SAFEGUARDS

The Connecticut experience should not serve as a model for national implementation of local exchange competition or competition in telecommunications generally.

Recognizing that Huber's "facts" about competitive conditions in Connecticut are simply unsupported and largely inaccurate rhetoric (as we have shown them to be), it becomes evident that the "Connecticut Experience" can hardly serve to support the notion that BOC entry into the long distance market will benefit consumers or the public generally. But the experience gained from observing ILEC entry into the long distance business on an integrated basis with its monopoly local services — as SNET has done — teaches volumes about the adverse competitive and public interest consequences of *premature* ILEC entry, which is precisely what Section 271 was intended to forestall. The "Connecticut Experience" does indeed provide a useful model of the consequences of such entry, and the reality is nothing like the "spin" that Huber and the BOCs portray.

To the contrary, as shown below, SNET has worked assiduously to frustrate the opening of its local market to competition. It delayed — and continues to delay — compliance with the State of Connecticut's own efforts to open local markets to competition, and has sought to escape the requirements of the federal *Telecommunications Act of 1996*, first by seeking a "rural" carrier exemption from those obligations, and then by engaging in a manipulation of its corporate form. It has also failed — despite its long-standing commitment — to implement acceptable OSS interfaces for competing carriers, and has acted to use its local monopoly to gain improper advantage in the long distance marketplace. In short, the "Connecticut Experience" confirms the wisdom of Congress' judgment that the Bell companies should be barred from the in-region interLATA market until they have fully opened their own local markets to competition.

SNET has "slow rolled" competitors on the path to implementing Connecticut's 1994 competition legislation.

To the extent it exists at all, local exchange competition in Connecticut has not come easily or quickly. Although Connecticut had a head start due in part to state legislation enacted almost two years before the federal law, it is no further along today in implementing or achieving local competition than most other jurisdictions. On July 1, 1994, Connecticut Public Act 94-83 became law. The legislation was expressly aimed at implementing statewide competition for all telecommunications services. In a presentation made a week prior to the new law's effective date, DPUC Chairman Reginald Smith outlined a series of interrelated proceedings that the agency considered necessary for implementation of the statute.⁵² The timeline attached to Chairman Smith's presentation suggested that the DPUC intended to complete the majority of these proceedings by the end of 1995 and the remainder before the end of 1996. In adopting this ambitious schedule, it seems likely that the DPUC must have counted on the cooperation of the state's largest incumbent provider in implementing the transition to a competitive environment. However, neither the Department's vision nor the detailed procedural roadmap it adopted have sufficed to overcome the creative maneuvering and systematic foot-dragging in which SNET has engaged over the past three and a half years.

Connecticut's Public Act 94-83, like the federal Telecommunications Act of 1996, placed a high priority on giving new entrants access to the incumbent's service platform. Thus, one of the first dockets to be opened by the Department, in the process of implementing Public Act 94-83, addressed the cost methodology to be used for pricing the unbundled elements that made up SNET's noncompetitive and "emerging competitive" services.⁵³ The Department began by establishing the basic principles of the cost methodology it intended for SNET to use. It directed SNET to develop rates for various unbundled elements, supported by cost studies in compliance with the DPUC's cost directives. However, the rates that SNET filed did not comply, and in fact the DPUC, in a December 1995 order, found that SNET had "jeopardized" the development of local competition in Connecticut. Specifically, the Department stated:

In this proceeding, SNET, as the sole repository of cost information, bore a special burden of responsibility to assist the Department in seeing that the rates and charges approved herein are fair and reasonable (to SNET and to its competitors) and foster competition in Connecticut. SNET has failed, however, to provide the Department an uncontested cost

52. *Proposed Framework for the Implementation of Public Act 94-83 and Commentary from Chairman Reginald J. Smith*, presented at the June 23, 1994 Technical Meeting in DPUC Docket No. 94-05-26.

53. Connecticut DPUC Docket No. 94-10-01, *DPUC Investigation into SNET's Cost of Providing Service*.

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foundation necessary to support a pricing structure such as that sought by SNET and has, accordingly, jeopardized the evolution of broader market participation in Connecticut and the realization of competitive benefits by the public.⁵⁴

Today, over three years after the DPUC began working toward its goal, key aspects of the availability and pricing of SNET's UNEs and wholesale services remain subject to considerable uncertainty. For example, the DPUC gave SNET a deadline of December 1997 to submit additional evidence in support of the Company's assertion that the average level of so-called common costs to be recovered through its UNE rates should be in the neighborhood of 59%, rather than the 25% level set by the DPUC.⁵⁵ If SNET prevails, new entrants will pay substantially higher rates for UNEs. This situation only perpetuates uncertainty as to the rates that SNET will eventually be allowed to charge for its most basic unbundled network elements, and thus discourages would-be entrants from investing in the state. Yet another example is SNET's recent announcement that it will unilaterally insist upon re-opening approved interconnection agreements in an effort to avoid its earlier agreement to provide CLECs with numerous UNE combinations.⁵⁶

SNET has distinguished itself by its repeated efforts to evade its responsibilities under the 1996 Telecommunications Act and Connecticut law.

SNET's invocation of the Act's "rural carrier" provision

Soon after the 1996 Telecommunications Act became law, SNET demonstrated its willingness to invoke every loophole and legal maneuver to escape fundamental obligations that were imposed upon incumbent LECs. On March 15, 1996, invoking Section 251(f)(2) — "Suspensions and Modifications for Rural Carriers" — SNET petitioned the DPUC to "suspend" certain Section 251 interconnection obligations to which the Company would

54. Connecticut DPUC Docket 96-06-17, *Application of SNET for Approval to Offer Unbundled Loops, Ports, and Associated Interconnection Arrangements*, Decision, December 20, 1995, at 81. The interim rates set in that order remained in place for some sixteen months (until April 1997), when SNET's TSLRIC study was finally accepted by the DPUC. DPUC Docket 96-09-22, *DPUC Investigation into SNET Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996*, Decision, April 23, 1997.

55. Connecticut DPUC Docket 96-09-22, *DPUC Investigation into SNET's Unbundled Loops, Ports and Associated Interconnection Arrangements*, April 23, 1997.

56. SNET Response (October 17, 1997) to AT&T Request No. ATT-04, Connecticut DPUC Docket No. 97-08-06, *DPUC Investigation into SNET's Operational Support Systems*.

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otherwise be fully subject.⁵⁷ Section 251(f)(2) provides an exemption protecting small, rural telecommunications carriers from the potential financial consequences of competition, by allowing an ILEC with fewer than 2 percent of the nation's subscriber lines to petition a state commission to suspend or modify key interconnection and unbundling requirements of Section 251.⁵⁸ SNET argued that the "rural carrier" designation in the title of Section 251(f)(2) was not legally binding in the interpretation of the subsection and that technically the Company was small enough to fall within the scope of this provision, which would relieve it of many of the interconnection and interconnection-related requirements of Section 251. SNET thus asked the DPUC to relieve it of its obligation, under Section 251(d)(4), "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail." SNET claimed that its local exchange rates were "below cost" and that, accordingly, to require it to price them at a wholesale "discount," in accordance with the Act's wholesale pricing rule (Section 252(d)(3)) would impose an undue economic burden.⁵⁹

In drafting the Act, Congress recognized that small, independent telephone companies, especially those serving rural, insular and high-cost locations, might face unique economic or technical challenges arising from the transition to a competitive environment.⁶⁰ However, it is highly unlikely that Congress envisioned the ILEC serving virtually all of the relatively wealthy, densely populated state of Connecticut as an intended beneficiary of this exceptional treatment. Ultimately, the DPUC found that SNET's evidence fell short of demonstrating its claim of economic hardship.⁶¹

57. Connecticut DPUC Docket No. 96-03-19, *Petition of SNET for Suspension of Section 251(c)(4) of the Telecommunications Act of 1996*, Decision, May 17, 1996, at 1.

58. The waiver authority can be applied to any part or parts of Section 251, subsection (b), "Obligations of All Local Exchange Carriers" and subsection (c), "Additional obligations of incumbent Local Exchange Carriers." These provisions lie at the core of the Act's framework for local exchange competition.

59. SNET Brief, Connecticut DPUC Docket No. 96-03-19, April 16, 1997, at 3-4.

60. Numerous sections of the Act specifically address rural telephone companies. See, e.g., Section 3(47) (defining "rural telephone company"), Section 251(f)(1) ("Exemption for certain rural telephone companies"), Section 251(f)(2) ("Suspensions and modifications for rural carriers"), Section 253(f) (which permits a state public utilities commission condition CLEC entry into a rural area on the CLEC's first qualifying for "eligible carrier" status, as defined in section 214(e)(1)). The Act also responds extensively to economic and competitive issues associated with serving rural, insular, and high cost areas in the provisions dealing with universal service provisions. Telecommunications Act of 1996, Section 254.

61. Connecticut DPUC Docket No. 96-03-19, *Petition of SNET for Suspension of Section 251(c)(4) of the Telecommunications Act of 1996*, at 18-19.

Evasion of wholesale pricing obligations through the application of SNET America, Inc. for CLEC status

After SNET failed to convince the DPUC to allow the ILEC to deviate from the resale obligations contained in Sections 251 and 252 of the Act, the Company initiated a far more elaborate maneuver for achieving the same outcome. On January 1, 1997, SNET and its holding company, Southern New England Telecommunications Corporation filed with the DPUC for authority to implement a full-scale reorganization that would bifurcate the Corporation's wholesale and retailing businesses into two separate parts.⁶² Under the restructuring, which was approved by the DPUC on June 25, 1997,⁶³ SNET's wholesale local exchange carrier business remains with The Southern New England Telephone Company ("SNET-Telco"), while all retailing functions and assets of the Corporation are transferred to another wholly-owned subsidiary, SNET America, Inc. (SAI), a reseller of interstate and international long distance services. SNET stated openly that a primary objective of the restructuring was to escape the imposition of the Section 251(d)(4) wholesale requirement.⁶⁴ The restructuring strikes at the very core of market-opening mechanisms in the federal law.

Incredibly, SNET also succeeded in convincing the DPUC that SAI should be regulated as a newly entering CLEC, rather than as the successor to Connecticut's largest incumbent retail local telecommunications provider. Without winning this extraordinary concession, SAI would have been classified as an "incumbent local exchange carrier" as defined in

62. Connecticut DPUC Docket No 94-10-05, *DPUC Investigation of SNET Affiliate Matters Associated with the Implementation of Public Act 94-83*, Decision, June 25, 1997, at 10. See also, *Submission of Southern New England Telecommunications Corporation and The Southern New England Telephone Company* in DPUC Docket 94-10-05, filed January 24, 1997.

63. Connecticut DPUC Docket No 94-10-05, *DPUC Investigation of the Southern New England Telephone Company Affiliate Matters Associated with the Implementation of Public Act 94-83*, Decision, June 25, 1997.

64. The filing is explicit in conveying the message that SNET has decided that it cannot abide by the framework mandated in the 1996 Telecommunications Act, stating:

This reorganization is in response to the dramatic legislative changes that have occurred in the last two years. While the goal of recent federal legislation is to increase telecommunications competition, it essentially prevents ILECs from differentiating their retail services from those of their competitors. The Telecommunications Act of 1996...requires the Telco to provide at wholesale every telecommunications service offered at retail, including within that definition all competitive telecommunications services, long-term promotions, service packages and discounted rate plans.

SNET Submission, January 24, 1997, DPUC Docket No. 94-10-05, at 3-4.

Section 251(h)(1)⁶⁵ and as an "incumbent local exchange carrier" could not have escaped the application of Sections 251(c)(4) and 252(d)(3). This troubling action, if it is upheld by the courts, would expunge many of the competitive safeguards contained in Sections 251 and 252 of the Act.

The restructuring gives SNET the opportunity to "whipsaw" unaffiliated CLECs between the wholesale prices of SNET-Telco and the retail prices of SAI, and in so doing create a price squeeze that could eliminate the possibility of any nonaffiliated CLEC's use of SNET's network resources. Indeed, by discontinuing its offerings of all retail services and prices, SNET-Telco (which is a Section 251(h)(1) "incumbent local exchange carrier") can nonetheless effectively evade Section 252(d)(3), which requires that wholesale rates be set "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier," simply by no longer having any "retail rates" from which avoided retailing costs can be removed.⁶⁶

SNET subversion of safeguards imposed upon the restructuring

While insisting that SAI be regulated only as a new entrant, SNET's restructuring proposal provided that 100 percent of the ILEC's (i.e., SNET-Telco's) existing retail customer base (i.e., nearly 100 percent of the retail customers within SNET's service territory) be transferred directly to SAI. The DPUC rejected this, and instead prescribed a "balloting" procedure by which most SNET retail customers would be given the opportunity to select a CLEC provider. Under the rule adopted by the DPUC, customers who do not make a local retail carrier selection will be assigned to CLECs at random, in proportion to the elections of participating customers.

SNET's approach to the balloting process reveals much about its unwillingness to deal impartially with unaffiliated CLECs relative to its SAI affiliate. Recently, SNET provided the DPUC with a draft telemarketing "script" prepared to respond to customer inquiries

65. Section 251(h)(1) defines an "incumbent local exchange carrier" as a "local exchange carrier that-- (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)." It is difficult to imagine that Congress could have intended for an ILEC to so easily emasculate this definition and in so doing escape the various obligations attendant thereto merely by the act of creating a wholly-owned affiliate.

66. An ILEC whose wholesale rates are discounted from retail pursuant to Section 252(d)(3) would be required to make a commensurate reduction in those rates whenever its retail rates are lowered. However, because SNET-Telco's wholesale rates are set *independently* of SAI's retail prices, SAI can drop its *retail* prices while SNET-Telco's wholesale rates remain unchanged, thereby creating a price squeeze for competing resellers.

about the transition from SNET to another provider. In the script, SAI was the only CLEC mentioned by name (in fact, several times). Other CLECs were referred to only as "alternative" providers.⁶⁷ This demonstrates the type of ingrained preference that SNET-Telco can be expected to have for its "CLEC" affiliate, a relationship that has already begun to interfere with the non-discrimination requirements that are critical to creating a competitive environment for local exchange service.

Several CLECs have also made the DPUC aware that balloting should not be permitted to go forward until access to SNET's Operations Support Systems (OSS) are sufficiently robust to ensure that SNET can process orders to transfer retail customers to competitors in sufficient quantity and as seamlessly and as accurately as it will hand them off to SAI. While the DPUC has taken this concern seriously and has postponed any balloting until early 1999, some additional problems arise as a consequence of this delay. As Connecticut's Consumer Counsel aptly noted, during the pre-balloting period SAI will aggressively attempt to capture as many customers as possible and thereby prevent them from being balloted.⁶⁸ Thus, even in the pre-balloting period, any significant discrepancies that may exist between the level of OSS access provided to SAI and that made available to nonaffiliated CLECs can have permanent negative consequences for local competition.

Failure to provide non-discriminatory access to operations support systems

As in other areas, SNET has delayed providing access to OSS and has kept competitors guessing about the ultimate direction of its OSS plans. Furthermore, SNET's decision to reorganize midway through the process of implementing local competition has complicated matters considerably and has intensified concerns over the SNET-Telco entity's commitment to providing nondiscriminatory OSS access to nonaffiliated CLECs.

The head start provided by Public Act 94-83 might have put SNET and Connecticut ahead of other states on the road to implementing mechanized interfaces. Based upon their experience operating in other sectors of the telecommunications business, certain CLECs recognized that operational interfaces were a critical component for competing with the incumbent provider, and they pressed SNET to make access to efficient OSS a part of the

67. See, e.g., Connecticut DPUC Docket No. 97-08-12, *DPUC Administration of the Local Exchange Company Election Process*, Response of MCI Telecommunications Corporation, November 7, 1997, relative to Service Representative Scripts filed by SNET on November 3, 1997 (with redlined original scripts attached).

68. Balloting would be available only to customers who still receive retail local service from the SNET-Telco entity. Any retail customers that are migrated to SAI will not be offered a ballot opportunity. Since SAI will enjoy numerous incumbency advantages (arising from, among other things, SNET-Telco's near-100% market share, brand identification, and customer inertia) during the pre-balloting transition that will not be available to CLECs, it will be in a unique position to preempt its (future) rivals from capturing market share at a time that SAI is itself free to mine the SNET-Telco customer base to its heart's content.

basic requirements for interconnection.⁶⁹ In a stipulation signed in April 1995, nearly a year before the federal Act, SNET agreed to work with CLECs to resolve numerous operational issues.⁷⁰ But SNET's early acknowledgment of this key component of competitive interconnection has proven to be little more than lip service. Nearly three years after SNET (by its participation in the aforementioned stipulation) acknowledged this obligation, SNET's operations support systems for CLECs in Connecticut are not even fully specified, let alone rigorously tested, and they are nowhere near the operational level required to handle the transaction loads that can be reasonably expected when the balloting of retail customers occurs.

As the FCC has recognized, development of OSS access is not a one-way process. CLECs must obtain accurate, detailed, and final technical specifications and business practices and protocols in order to interface with the ILEC's OSS. Connecticut CLECs have expended vast resources over the past several years attempting to prepare to interface with existing SNET OSS.⁷¹ Those CLECs actively attempting to work with SNET's OSS specifications have complained that these have, so far, been incomplete, subject to untimely modifications, and almost completely lacking in their definition of applicable business practices and protocols.⁷²

Further complexities were introduced when SNET suddenly proposed to divide itself into retail and wholesale components, and with those complexities came still more delays. Because of the restructuring, the possibility arose that SNET-Telco would use one OSS approach in its wholesale operations, a second for its CLEC affiliate, SAI, and yet a third for nonaffiliated CLECs. In approving the SNET restructuring, the DPUC set December 31, 1997 as a deadline for SNET to demonstrate "parity" between the access to OSS it provided nonaffiliated CLECs and OSS functionality that SNET would make available to SAI.⁷³ By

69. In the negotiations that occurred in the Spring of 1995, AT&T attempted without success to convince SNET to offer mechanized interfaces as a basic element of the ILEC's interconnection offering. See, DPUC Docket 94-10-02, *DPUC Investigation into Unbundling SNET's Local Telecommunications Network*, Decision, September 22, 1995, at 80-81.

70. The Stipulation was generally endorsed by the DPUC in its September 22, 1995 *Decision* in Docket 94-10-02, *DPUC Investigation into the Unbundling of SNET's Local Telecommunications Network*, and is reproduced as an appendix to that order.

71. See, e.g., AT&T Reply Comments, filed November 26, 1997, in Connecticut DPUC Docket 97-08-06, *DPUC Investigation into SNET's Operational Support Systems*, at 5-6, 8-9.

72. AT&T Comments, filed September 24, 1997 in Connecticut DPUC Docket No. 97-08-06, *DPUC Investigation into SNET's Operational Support Systems*, cite numerous examples of misspecified information, information given in piecemeal manner, and information modified after extensive development had occurred.

73. Connecticut DPUC Docket No 94-10-05, *DPUC Investigation of SNET Affiliate Matters Associated with the Implementation of Public Act 94-83*, Decision, June 25, 1997, at 44.

the fall of 1997, it became clear that SNET would not meet this goal. Recognizing that nondiscriminatory and robust OSS access for all CLECs is necessary prior to balloting, the DPUC agreed to a substantial delay before balloting would take place.⁷⁴ However, the recent focus on parity of OSS access between SAI and nonaffiliated CLECs has diverted attention from the separate and distinct requirement that CLEC OSS access be equivalent to what the ILEC — SNET — provides for its own use.⁷⁵ Thus, even if the provision by SNET of inadequate CLEC OSS access affects SAI along with nonaffiliated competitors, progress toward competition in local exchange service will still suffer.

SNET's most recent proposal for CLEC OSS⁷⁶ continues to isolate the CLECs from the planning and implementation process for OSS access, instead requiring them to await the results of further unilateral OSS development. Significantly, after more than two years of development efforts, SNET has now proposed to substantially change its approach to CLEC OSS and to prove the merits of its new and still isolated development efforts through "simulations" and "demonstrations" to regulators, rather than through any real-world interaction with the intended users of these systems. Neither of these contrived and entirely SNET-controlled approaches can demonstrate "operational readiness."⁷⁷ A "demonstration" that is managed and specified entirely by SNET, without any CLEC input to the performance measurements or evaluation guidelines, cannot possibly resolve issues integral to the functioning of a working system under actual conditions of commercial use. And SNET presumptuously expects CLECs to simply hold their breaths for another eight months awaiting the completion of this "laboratory model."

74. DPUC Investigation of SNET Affiliate Matters Associated with the Implementation of Public Act 94-83 - Reopening, Decision, December 24, 1997 at 3. While it has delayed balloting because of SNET's inability to meet OSS "parity" requirements by the time originally specified, the DPUC refused to delay SAI's entry into the local exchange market pending the satisfactory resolution of OSS parity and related issues. See, Letter from Robert J. Murphy, Executive Secretary, Department of Public Utility Control, to Laurie S. Gill (counsel to AT&T), and David Ellen and Cherie R. Kiser (counsel to Cablevision Lightpath), dated October 31, 1997, in Docket Nos. 97-08-06 (OSS), 97-08-12 (Balloting) and 94-10-05 (SNET Affiliate Matters).

75. "For those OSS functions provided to competing carriers that are analogous to OSS functions that a BOC provides to itself in connection with retail service offerings, the BOC must provide access to competing carriers that is equal to the level of access that the BOC provides itself, its customers or its affiliates, in terms of quality, accuracy and timeliness." *Ameritech Michigan Order* at para. 139. "For those OSS functions that have no retail analogue, such as the ordering and provisioning of unbundled network elements, the BOC must demonstrate that the access it provides to competing carriers satisfies its duty of nondiscrimination because it offers an efficient competitor a meaningful opportunity to compete." *Id.*, at para. 141.

76. The SNET proposal is described in comments filed on November 14, 1997 in Connecticut DPUC Docket 97-08-06, *DPUC Investigation into SNET's Operational Support Systems*.

77. As AT&T has commented, "A 'simulation' might, for example, use software that is completely different from that used by the interface itself. This simulation software will serve to replicate the look and feel of the actual software, ... yet have no relationship to how the actual interface software functions." AT&T Reply Comments in Connecticut DPUC Docket No. 97-08-06, filed November 26, 1997, at 13, fn. 11.

It is not possible here to recount every twist and turn of the OSS saga in Connecticut, nor is it useful to do so. Even this brief summary demonstrates that implementing nondiscriminatory OSS access is not a simple process nor is it one in which a single party can be held accountable for all missteps or delays. However, an examination of SNET's handling of OSS development in Connecticut reveals that it has imposed unnecessary delays and resource demands on new entrants, and that those delays have imposed far more competitive costs on CLECs than they have on SNET or its SAI affiliate. What singles out Connecticut from most other jurisdictions is that, unlike the BOCs that are subject to Section 271 and that want access to the long distance market, SNET already has such access and has no interest or incentive to move any more quickly than it minimally must.

SNET's abuse of its local exchange carrier incumbency to benefit its long distance business

SNET anti-slamming program unfairly inhibits customers from switching to competing long distance carriers

SNET has already demonstrated both the inclination and the ability to use its position as an incumbent LEC to unfairly advantage its competitive toll operations. To cement its hold on customers once it has obtained their intra- or interLATA toll business, SNET offers a free service it calls "Carrier Choice Protection." Once invoked, this "protection" makes it much more difficult for the customer to change from the current provider (i.e., SNET or SNET America) to an other long distance carrier. With "Carrier Choice Protection" in effect, an SNET customer would be required to provide a signed, written request to SNET in order to change long distance carrier, e.g., from SNET to an IXC. As the monopoly provider of local exchange service, SNET controls the "access" to facilities used to originate and terminate virtually all long distance calls. The customer's choice of intra- and interLATA Primary Interexchange Carrier ("PIC") is programmed into SNET's switching equipment, and SNET therefore has exclusive control over implementation of a customer's decision to change long distance carriers. Unlike non-affiliated IXCs, SNET can both sell long distance service to its local service customer *and* simultaneously offer and provide the so-called "Carrier Choice Protection." Because of this unique role in the customer's carrier selection process, SNET's *local service* marketing and customer service representatives are able to offer its PIC freeze "protection" *on a selective basis* to customers who chose SNET as their *long distance* service provider.⁷⁸

78. In theory, a customer can initiate a request to SNET for Carrier Choice Protection at any time; however, the only time that SNET has an incentive to have its local service customer representatives affirmatively offer such "protection" is when the customer selects SNET or SAI for his/her long distance service.

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Carrier selection freeze procedures, such as SNET's, are under investigation by the FCC.⁷⁹ The comments received in that proceeding reflect widespread concern by competitors that such ILEC-implemented procedures can be and are being applied in a manner that inhibits customers from implementing changes in their preferred carrier, particularly when the change is *from* the ILEC or ILEC affiliate *to* an unaffiliated IXC or CLEC.⁸⁰ In comments to the FCC, a carrier that operates as both an ILEC and an IXC, Citizens Utilities Company, acknowledged that "[b]y making it more difficult to change presubscribed carriers, [LECs] reduce the likelihood that customers will take all of the necessary steps to effect a [carrier] change." It conceded that "[o]bviously...the LEC has [an] incentive to engage in PIC freeze solicitations that favor its affiliated toll carrier."⁸¹ In Connecticut, SNET's "Carrier Choice Protection" is also the subject of a civil action by AT&T in U.S. District Court for deceptive and unfair trade practices.⁸²

SNET-Telco's insistence on handing over all retail intraLATA toll business to its CLEC affiliate, notwithstanding customer selection of an unaffiliated CLEC in balloting process

Under SNET's original restructuring proposal, its CLEC affiliate, SAI, would have simply inherited all of SNET-Telco's retail customers. In approving the restructuring, the DPUC rejected SNET's bold attempt to hand all of its retail business to its affiliate "on a silver platter" and instead set up the "Local Exchange Election Process" under which customers will choose, through balloting, among SAI and several nonaffiliated CLECs. As incumbent LEC, SNET has also been the historical "default" provider of intraLATA toll service to most Connecticut customers. In September 1997, Teleport Communications Group asked the DPUC to clarify its rulings regarding the balloting process to make clear that when a customer being provided intraLATA toll service by SNET (and who had not yet affirmatively chosen another provider for intraLATA toll service) balloted his or her local exchange service to a CLEC (whether SAI or a nonaffiliated CLEC), the customer's

79. See *Policies and Rules Pertaining to Local Exchange Carrier "Freezes" on Consumer Choices in Primary Local Exchange or Interexchange Carriers/MCI Telecommunications Corp. Petition for Rulemaking*, FCC File No. CCB/CPD 97-19 ("PIC Freeze Rulemaking").

80. This view was widely reflected in the comments filed with the FCC by IXCs and CLECs who commented on the MCI petition. See, *PIC Freeze Rulemaking*, AT&T Reply Comments, filed June 19, 1997, at 2, citing initial comments of numerous other IXCs and CLECs (e.g., Association for Local Telecommunication Services, Worldcom, Inc., Sprint).

81. *Id.* at 2, citing Comments of Citizens Utilities Company at 3.

82. *AT&T Corp. v. Southern New England Telephone Company, SNET America, Inc., and Southern New England Telecommunications Corporation*, U.S. District Court for the District of Connecticut, Civil Action No. 397CV01056, filed May 30, 1997.

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intraLATA toll "PIC" would also migrate in tandem to the selected CLEC. The DPUC agreed, finding that "in those instances, where an intraLATA toll provider has not been designated by February 1, 1998,⁸³ and the subscriber is deemed subject to balloting, the elected (or assigned)⁸⁴ CLEC will assume the responsibilities for intraLATA toll service *comparable to that currently provided by the ILEC.*"⁸⁵ SNET-Telco aggressively challenged this decision, and even opposed an alternative approach, proposed by AT&T, under which customers would be given the opportunity to make separate carrier selections on the ballot for their local service and their intraLATA toll service.⁸⁶ Instead, SNET-Telco asserted that the SNET affiliate was entitled to the intraLATA toll business of all existing SNET-Telco retail customers,⁸⁷ and the Department ultimately reversed its ruling.⁸⁸

The outcome that SNET fought so hard to obtain is inherently anticompetitive. Unlike customers who switched their intraLATA service from SNET to a nonaffiliated toll services provider, the vast majority of the customers to whom SNET presently provides intraLATA toll service were simply inherited and never affirmatively selected the SNET-Telco entity as their intrastate toll provider. Unlike SAI, which if selected (or assigned) as the customer's CLEC will also obtain the customer's intraLATA toll business, a nonaffiliated CLEC will subsequently have to make a separate solicitation to every customer who elects (or is assigned to) the nonaffiliated CLEC's local exchange service in order to also obtain that customer's intraLATA toll calling. SNET's insistence that SAI be given the exclusive benefit of the incumbent LEC's intrastate toll legacy is thus further evidence of its continuing resistance to a fair and open competitive environment.

83. February 1998 would have been the time immediately proceeding the originally scheduled commencement of local exchange balloting. As previously noted, balloting has been delayed, in large part because of the insufficiency of SNET's OSS for competitors.

84. Under the Connecticut DPUC's rules, customers who do not participate in the balloting will be assigned to a CLEC in relative proportion to the selections of customers who do affirmatively ballot.

85. Department Answers to Questions Raised at Technical Conference, October 4, 1997, Docket No. 97-08-12, *DPUC Administration of the Local Exchange Company Election Process* (emphasis supplied).

86. Connecticut DPUC Docket No. 97-08-12, SNET Brief, dated November 17, 1997, at 8.

87. Connecticut DPUC Docket 97-08-12, SNET Letter, dated October 8, 1997.

88. A recent DPUC advisory appears to reverse the Department's original position on this issue and bow to SNET's view that intraLATA toll, as a "competitive service," is exempt from balloting. Ignoring the competitive unfairness of allowing SAI to simply inherit the ILEC's entire intrastate toll business, the DPUC has chosen instead to concern itself with what it characterizes as the "discriminatory treatment of the ILEC" if SNET's intraLATA toll (and not that of CLECs) were subject to balloting. Connecticut DPUC No. 97-08-12, *DPUC Administration of the Local Exchange Company Election Process*, revised response to question raised at technical conference, undated release, "IntraLATA Toll Issue," received December 18, 1997.